

AMENDED IN SENATE JUNE 24, 2014

AMENDED IN SENATE JUNE 9, 2014

AMENDED IN ASSEMBLY APRIL 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2344

Introduced by Assembly Member Ammiano

February 21, 2014

An act to amend Sections 7962, 9001, 9002, 9006, and 9007 of, and to add Sections 7613.5 and 9000.5 to, the Family Code, relating to family law.

LEGISLATIVE COUNSEL'S DIGEST

AB 2344, as amended, Ammiano. Family law: parentage.

(1) The Uniform Parentage Act defines the parent and child relationship as the legal relationship existing between a child and the child's parents, including the mother and child relationship and the father and child relationship, and governs proceedings to establish that relationship. Under existing law the donor of semen provided to a licensed physician and surgeon or to a licensed sperm bank for use in assisted reproduction of a woman other than the donor's spouse is treated at law as if he were not the natural parent of the child thereby conceived unless otherwise agreed in a writing signed by the donor and the woman prior to the conception of the child.

This bill would establish statutory forms for assisted reproduction to provide clarity regarding a person's intent to be a legal parent if he or she is using assisted reproduction at the time of conception. The bill would state that the forms satisfy the writing requirement described

above, but would state that use of the forms would not be required to satisfy that writing requirement.

(2) Existing law establishes the process by which a person may be adopted by a stepparent who is married to or is the domestic partner of the person's parent. Existing law requires that each case of stepparent adoption be investigated by certain individuals or entities, including a probation officer, private licensed adoption agency, or county welfare department in the county in which the adoption proceeding is pending. Under existing law, the prospective adoptive parent is liable for all reasonable costs incurred in connection with the stepparent adoption, including costs incurred for the investigation. Existing law also requires the prospective adoptive parents to be examined by the court, as specified.

This bill would establish a procedure for conducting a stepparent adoption involving a spouse or partner who gave birth to the child during the marriage or domestic partnership, and would exempt these adoptions from the requirements that a home visit or home study be performed, that the prospective adoptive parent appear before the court, and that the prospective adoptive parent be liable for all reasonable costs incurred in connection with the stepparent adoption, unless otherwise ordered by the court for good cause. The bill would make related and conforming changes.

(3) Existing law requires an assisted reproduction agreement for gestational carriers to include the date on which the assisted reproduction agreement was executed, the persons from which the gametes originated, unless anonymously donated, and the identity of the intended parent or parents.

This bill would require a disclosure of the manner in which the intended parents will cover the medical expenses of the gestational carrier and of the newborn, as provided.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 7613.5 is added to the Family Code, to
2 read:
3 7613.5. (a) An intended parent may, but is not required to, use
4 the forms set forth in this section to demonstrate his or her intent
5 to be a legal parent of a child conceived through assisted

1 reproduction. These forms shall satisfy the writing requirement
2 specified in Section 7613, and are designed to provide clarity
3 regarding the intentions, at the time of conception, of intended
4 parents using assisted reproduction. These forms do not affect any
5 presumptions of parentage based on Section 7611, and do not
6 preclude a court from considering any other claims to parentage
7 under California statute or case law.

8 (b) These forms apply only in very limited circumstances. Please
9 read the forms carefully to see if you qualify for use of the forms.

10 (c) These forms do not apply to assisted reproduction agreements
11 for gestational carriers or surrogacy agreements.

12 (d) Nothing in this section shall be interpreted to require the use
13 of one of these forms to satisfy the writing requirement of Section
14 7613.

15 (e) The following are the optional California Statutory Forms
16 for Assisted Reproduction:

17
18 **California Statutory Forms for Assisted Reproduction, Form 1:**

19
20 Married Spouses or Registered Domestic Partners Using Assisted Reproduction
21 to Conceive a Child

22 Use this form if: (1) You and the other person are married spouses or registered
23 domestic partners (including registered domestic partners or civil union partners
24 from another jurisdiction); (2) you and the other person are conceiving a child
25 through assisted reproduction using sperm and/or egg donation; and (3) one
26 of you will be giving birth.

27
28 ~~WARNING: Signing this form does not terminate the parentage of a sperm~~
29 ~~donor, who is only treated as a sperm donor~~

30 ***WARNING: Signing this form does not terminate the parentage claim of a***
31 ***sperm donor. A sperm donor's claim to parentage is terminated*** if the sperm
32 is provided to a licensed physician or surgeon or to a licensed sperm bank prior
33 to insemination as required by Section 7613(b) of the Family Code.

34
35 The laws about parentage of a child are complicated. **You are strongly**
36 **encouraged to consult with an attorney about your rights.** Even if you do
37 not fill out this form, a spouse or domestic partner of the parent giving birth
38 is presumed to be a legal parent of any child born during the marriage or
39 domestic partnership.

1 _____
2
3 This form demonstrates your intent to be parents of the child you plan to
4 conceive through assisted reproduction using sperm and/or egg donation.
5

6 I, _____ (print name of spouse/partner), am married to, or
7 in a registered domestic partnership (including a registered domestic partnership
8 or civil union from another jurisdiction) with, a person who will give birth to
9 a child we plan to conceive through assisted reproduction using sperm and/or
10 egg donation. I consent to the use of assisted reproduction by my
11 spouse/domestic partner to conceive a child. I INTEND to be a parent of the
12 child conceived.
13

14 SIGNATURES

15
16 Intended parent who will give birth: _____ (print name)
17 _____ (signature) _____ (date)
18

19 Intended parent spouse or registered domestic partner: _____ (print
20 name)
21 _____ (signature) _____ (date)
22

23 _____
24
25 NOTARY ACKNOWLEDGMENT

26
27 State of California
28 County of _____
29

30 On _____ before me, _____
31 (insert name and title of the officer)
32 personally appeared _____,
33 who proved to me on the basis of satisfactory evidence to be the person(s)
34 whose name(s) is/are subscribed to the within instrument and acknowledged
35 to me that he/she/they executed the same in his/her/their authorized capacity,
36 and that by his/her/their signature(s) on the instrument the person(s), or the
37 entity upon behalf of which the person(s) acted, executed the instrument.
38

39 I certify under PENALTY OF PERJURY under the laws of the State of
40 California that the foregoing paragraph is true and correct.

1
2 WITNESS my hand and official seal.

3
4 Signature _____ (Seal)

5
6
7
8
9 **California Statutory Forms for Assisted Reproduction, Form 2:**

10
11 Unmarried, Intended Parents Using Intended Parent's Sperm to Conceive a
12 Child

13 Use this form if: (1) Neither you or the other person are married or in a
14 registered domestic partnership (including a registered domestic partnership
15 or civil union from another state); (2) one of you will give birth to a child
16 conceived through assisted reproduction using the intended parent's sperm;
17 and (3) you both intend to be parents of that child.
18

19 Do not use this form if you are conceiving using a surrogate.

20
21 WARNING: If you do not sign this form, you ~~will~~ *may* be treated as a sperm
22 donor if your sperm is provided to a licensed physician or surgeon or to a
23 licensed sperm bank prior to insemination according to Section 7613(b) of the
24 Family Code.
25

26 The laws about parentage of a child are complicated. **You are strongly**
27 **encouraged to consult with an attorney about your rights.**
28
29 _____
30

31 This form demonstrates your intent to be parents of the child you plan to
32 conceive through assisted reproduction using sperm donation.
33

34 I, _____ (print name of parent giving birth), plan to use
35 assisted reproduction with another intended parent who is providing sperm to
36 conceive the child. I am not married and am not in a registered domestic
37 partnership (including a registered domestic partnership or civil union from
38 another jurisdiction), and I INTEND for the person providing sperm to be a
39 parent of the child to be conceived.
40

I, _____ (print name of parent providing sperm), plan to use assisted reproduction to conceive a child using my sperm with the parent giving birth. I am not married and am not in a registered domestic partnership (including a registered domestic partnership or civil union from another jurisdiction), and I INTEND to be a parent of the child to be conceived.

SIGNATURES

Intended parent giving birth: _____ (print name)
_____ (signature) _____ (date)

Intended parent providing sperm: _____ (print name)
_____ (signature) _____ (date)

NOTARY ACKNOWLEDGMENT

State of California
County of _____)

On _____ before me, _____
(insert name and title of the officer)

personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s)
whose name(s) is/are subscribed to the within instrument and acknowledged
to me that he/she/they executed the same in his/her/their authorized capacity,
and that by his/her/their signature(s) on the instrument the person(s), or the
entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of
California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

California Statutory Forms for Assisted Reproduction, Form 3:

Intended Parents Conceiving a Child Using Eggs from One Parent and the Other Parent Will Give Birth

Use this form if: You are conceiving a child using the eggs from one of you and the other person will give birth to the child; (2) and you both intend to be parents to that child.

Do not use this form if you are conceiving using a surrogate.

WARNING: Signing this form does not terminate the parentage claim of a sperm donor, who is only treated as a sperm donor. *A sperm donor's claim to parentage is terminated if the sperm is provided to a licensed physician or surgeon or to a licensed sperm bank prior to insemination as required by Section 7613(b) of the Family Code.*

The laws about parentage of a child are complicated. **You are strongly encouraged to consult with an attorney about your rights.**

This form demonstrates your intent to be parents of the child you plan to conceive through assisted reproduction using eggs from one parent and the other parent will give birth to the child.

I, _____ (print name of parent giving birth), plan to use assisted reproduction to conceive and give birth to a child with another person who will provide eggs to conceive the child. I INTEND for the person providing eggs to be a parent of the child to be conceived.

I, _____ (print name of parent providing eggs), plan to use assisted reproduction to conceive a child with another person who will give birth to the child conceived using my eggs. I INTEND to be a parent of the child to be conceived.

SIGNATURES

Intended parent giving birth: _____ (print name)
_____ (signature) _____ (date)

Intended parent providing eggs: _____ (print name)

_____ (signature) _____ (date)

NOTARY ACKNOWLEDGMENT

State of California
County of _____)

On _____ before me, _____
(insert name and title of the officer)
personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s)
whose name(s) is/are subscribed to the within instrument and acknowledged
to me that he/she/they executed the same in his/her/their authorized capacity,
and that by his/her/their signature(s) on the instrument the person(s), or the
entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of
California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

SEC. 2. Section 7962 of the Family Code is amended to read:
7962. (a) An assisted reproduction agreement for gestational
carriers shall contain, but shall not be limited to, all of the following
information:

(1) The date on which the assisted reproduction agreement for
gestational carriers was executed.

(2) The persons from which the gametes originated, unless
anonymously donated.

(3) The identity of the intended parent or parents.

(4) Disclosure of how the intended parents will cover the
medical expenses of the gestational carrier and of the newborn or
newborns. If health care coverage is used to cover those medical
expenses, the disclosure shall include a review of the health care

1 policy provisions related to coverage for surrogate pregnancy,
2 including any possible liability of the gestational carrier, third-party
3 liability liens or other insurance coverage, and any notice
4 requirements that could affect coverage or liability of the
5 gestational carrier. The review and disclosure do not constitute
6 legal advice. If coverage of liability is uncertain, a statement of
7 that fact shall be sufficient to meet the requirements of this section.

8 (b) Prior to executing the written assisted reproduction
9 agreement for gestational carriers, a surrogate and the intended
10 parent or intended parents shall be represented by separate
11 independent licensed attorneys of their choosing.

12 (c) The assisted reproduction agreement for gestational carriers
13 shall be executed by the parties and the signatures on the assisted
14 reproduction agreement for gestational carriers shall be notarized
15 or witnessed by an equivalent method of affirmation as required
16 in the jurisdiction where the assisted reproduction agreement for
17 gestational carriers is executed.

18 (d) The parties to an assisted reproduction agreement for
19 gestational carriers shall not undergo an embryo transfer procedure,
20 or commence injectable medication in preparation for an embryo
21 transfer for assisted reproduction purposes, until the assisted
22 reproduction agreement for gestational carriers has been fully
23 executed as required by subdivisions (b) and (c) of this section.

24 (e) An action to establish the parent-child relationship between
25 the intended parent or parents and the child as to a child conceived
26 pursuant to an assisted reproduction agreement for gestational
27 carriers may be filed before the child's birth and may be filed in
28 the county where the child is anticipated to be born, the county
29 where the intended parent or intended parents reside, the county
30 where the surrogate resides, the county where the assisted
31 reproduction agreement for gestational carriers is executed, or the
32 county where medical procedures pursuant to the agreement are
33 to be performed. A copy of the assisted reproduction agreement
34 for gestational carriers shall be lodged in the court action filed for
35 the purpose of establishing the parent-child relationship. The parties
36 to the assisted reproduction agreement for gestational carriers shall
37 attest, under penalty of perjury, and to the best of their knowledge
38 and belief, as to the parties' compliance with this section in entering
39 into the assisted reproduction agreement for gestational carriers.
40 Submitting those declarations shall not constitute a waiver, under

1 Section 912 of the Evidence Code, of the lawyer-client privilege
2 described in Article 3 (commencing with Section 950) of Chapter
3 4 of Division 8 of the Evidence Code.

4 (f) (1) A notarized assisted reproduction agreement for
5 gestational carriers signed by all the parties, with the attached
6 declarations of independent attorneys, and lodged with the superior
7 court in accordance with this section, shall rebut any presumptions
8 contained within Part 2 (commencing with Section 7540),
9 subdivision (b) of Section 7610, and Sections 7611 and 7613, as
10 to the gestational carrier surrogate, her spouse, or partner being a
11 parent of the child or children.

12 (2) Upon petition of any party to a properly executed assisted
13 reproduction agreement for gestational carriers, the court shall
14 issue a judgment or order establishing a parent-child relationship,
15 whether pursuant to Section 7630 or otherwise. The judgment or
16 order may be issued before or after the child's or children's birth
17 subject to the limitations of Section 7633. Subject to proof of
18 compliance with this section, the judgment or order shall establish
19 the parent-child relationship of the intended parent or intended
20 parents identified in the surrogacy agreement and shall establish
21 that the surrogate, her spouse, or partner is not a parent of, and has
22 no parental rights or duties with respect to, the child or children.
23 The judgment or order shall terminate any parental rights of the
24 surrogate and her spouse or partner without further hearing or
25 evidence, unless the court or a party to the assisted reproduction
26 agreement for gestational carriers has a good faith, reasonable
27 belief that the assisted reproduction agreement for gestational
28 carriers or attorney declarations were not executed in accordance
29 with this section. Upon motion by a party to the assisted
30 reproduction agreement for gestational carriers, the matter shall
31 be scheduled for hearing before a judgment or order is issued.
32 Nothing in this section shall be construed to prevent a court from
33 finding and declaring that the intended parent is or intended parents
34 are the parent or parents of the child where compliance with this
35 section has not been met; however, the court shall require sufficient
36 proof entitling the parties to the relief sought.

37 (g) The petition, relinquishment or consent, agreement, order,
38 report to the court from any investigating agency, and any power
39 of attorney and deposition filed in the office of the clerk of the
40 court pursuant to this part shall not be open to inspection by any

1 person other than the parties to the proceeding and their attorneys
2 and the State Department of Social Services, except upon the
3 written authority of a judge of the superior court. A judge of the
4 superior court shall not authorize anyone to inspect the petition,
5 relinquishment or consent, agreement, order, report to the court
6 from any investigating agency, or power of attorney or deposition,
7 or any portion of those documents, except in exceptional
8 circumstances and where necessary. The petitioner may be required
9 to pay the expense of preparing the copies of the documents to be
10 inspected.

11 (h) Upon the written request of any party to the proceeding and
12 the order of any judge of the superior court, the clerk of the court
13 shall not provide any documents referred to in subdivision (g) for
14 inspection or copying to any other person, unless the name of the
15 gestational carrier or any information tending to identify the
16 gestational carrier is deleted from the documents or copies thereof.

17 (i) An assisted reproduction agreement for gestational carriers
18 executed in accordance with this section is presumptively valid
19 and shall not be rescinded or revoked without a court order. For
20 purposes of this part, any failure to comply with the requirements
21 of this section shall rebut the presumption of the validity of the
22 assisted reproduction agreement for gestational carriers.

23 SEC. 3. Section 9000.5 is added to the Family Code, to read:

24 9000.5. (a) Stepparent adoptions where one of the spouses or
25 partners gave birth to the child during the marriage or domestic
26 partnership, including a registered domestic partnership or civil
27 union from another jurisdiction, shall follow the procedure
28 provided by this section. Unless otherwise provided in this section,
29 the procedures for stepparent adoptions apply.

30 (b) The following are not required in stepparent adoptions under
31 this section unless otherwise ordered by the court for good cause:

32 (1) A home investigation pursuant to Section 9001 or a home
33 study.

34 (2) Costs incurred pursuant to Section 9002.

35 (3) A hearing pursuant to Section 9007.

36 (c) For stepparent adoptions filed under this section, the
37 following shall be filed with the petition for adoption:

38 (1) A copy of the parties' marriage certificate, registered
39 domestic partner certificate, or civil union from another
40 jurisdiction.

1 (2) A copy of the child's birth certificate.

2 (3) Declarations by the parent who gave birth and the spouse
3 or partner who is adopting explaining the circumstances of the
4 child's conception in detail sufficient to identify whether there
5 may be other persons with a claim to parentage of the child who
6 is required to be provided notice of, or who must consent to, the
7 adoption.

8 (d) The court may order a hearing to ascertain whether there
9 are additional persons who must be provided notice of, or who
10 must consent to, the adoption if it appears from the face of the
11 pleadings and the evidence that proper notice or consent have not
12 been provided.

13 (e) The court shall grant the stepparent adoption under this
14 section upon finding both of the following:

15 (1) That the parent who gave birth and the spouse or partner
16 who is adopting were married or in a domestic partnership,
17 including a registered domestic partnership or civil union from
18 another jurisdiction, at the time of the child's birth.

19 (2) Any other person with a claim to parentage of the child who
20 is required to be provided notice of, or who must consent to, the
21 adoption has been noticed or provided consent to the adoption.

22 SEC. 4. Section 9001 of the Family Code is amended to read:

23 9001. (a) Except as provided in Section 9000.5, the probation
24 officer, qualified court investigator, licensed clinical social worker,
25 licensed marriage family therapist, private licensed adoption
26 agency, or, at the option of the board of supervisors, the county
27 welfare department in the county in which the adoption proceeding
28 is pending shall make an investigation of each case of stepparent
29 adoption. The court may not make an order of adoption until after
30 the probation officer, qualified court investigator, licensed clinical
31 social worker, licensed marriage family therapist, private licensed
32 adoption agency, or county welfare department has filed its report
33 and recommendation and they have been considered by the court.

34 (b) If a private licensed adoption agency conducts the
35 investigation, it shall assign the investigation to a licensed clinical
36 social worker or licensed marriage and family therapist associated
37 with the agency. Any grievance regarding the investigation shall
38 be directed to the licensing authority of the clinical social worker
39 or marriage and family therapist, as applicable.

1 (c) Unless ordered by the court, no home study may be required
2 of the petitioner's home in a stepparent adoption. The agency
3 conducting the investigation or any interested person may request
4 the court to order a home study or the court may order a home
5 study on its own motion.

6 (d) "Home study" as used in this section means a physical
7 investigation of the premises where the child is residing.

8 (e) Nothing in this section shall be construed to require the State
9 Department of Social Services to issue regulations for stepparent
10 adoptions.

11 SEC. 5. Section 9002 of the Family Code is amended to read:

12 9002. Except as provided in Section 9000.5, in a stepparent
13 adoption, the prospective adoptive parent is liable for all reasonable
14 costs incurred in connection with the stepparent adoption,
15 including, but not limited to, costs incurred for the investigation
16 required by Section 9001, up to a maximum of seven hundred
17 dollars (\$700). The court, probation officer, qualified court
18 investigator, or county welfare department may defer, waive, or
19 reduce the fee if its payment would cause economic hardship to
20 the prospective adoptive parent detrimental to the welfare of the
21 adopted child.

22 SEC. 6. Section 9006 of the Family Code is amended to read:

23 9006. (a) If the petitioner moves to withdraw the adoption
24 petition or to dismiss the proceeding, the court clerk shall
25 immediately notify the probation officer, qualified court
26 investigator, or county welfare department of the action, unless a
27 home investigation was not required pursuant to Section 9000.5.

28 (b) If a birth parent has refused to give the required consent, the
29 adoption petition shall be dismissed.

30 SEC. 7. Section 9007 of the Family Code is amended to read:

31 9007. Except as provided in Section 9000.5, the prospective
32 adoptive parent and the child proposed to be adopted shall appear
33 before the court pursuant to Sections 8612, 8613, and 8613.5.